



Federal Communications Commission
Washington, D.C. 20554

August 19, 2013

Michael Morisy
MuckRock News
DEPT MR 3379
P.O. Box 55819
Boston, MA 02205-5819
Email: 3379-60096642@muckrock.com

Re: FOIA Control No. 2013-212

Dear Mr. Morisy:

On March 12, 2013, the Federal Communications Commission ("Commission" or "FCC") received your Freedom of Information Act ("FOIA") request, which we designated as FOIA Control No. 2013-212.¹ In your correspondence, you requested a copy of the Commission's contracts with Booz Allen Hamilton over the past 5 years, which includes any modifications as well as task or delivery orders.² Upon reviewing our files, we have identified several contracts entered between the Commission and Booz Allen during this time period, specifically: Contract Nos. FCC12G0057, PUR11000257, FCC10G0007 and PUR10000417.

Because records you sought could contain confidential commercial information that would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4), pursuant to 47 C.F.R. § 0.461(d)(3) of the Commission's rules, we informed Booz Allen that they were permitted to file a response to your FOIA request by April 22, 2013, explaining why any portions of these records are confidential commercial information that should be withheld.³

On April 22, 2013, Booz Allen indicated that they intended to file a response to this FOIA request, and filed a request for an extension of time, until May 1, 2013.⁴ On April 23, 2013, this request was granted.⁵ When Booz Allen failed to file a response by May 1, 2013, we

¹ Email from Michael Morisy to FOIA@fcc.gov, dated March 12, 2013 ("FOIA request").

² *Id.*

³ See letter from Nereyda Dunn, Office of Managing Director, FCC, to Erica Goode, Booz Allen Hamilton, dated Apr. 12, 2013.

⁴ See email from Erica Goode, Booz Allen Hamilton, to Nereyda Dunn, Office of Managing Director, FCC, dated Apr. 22, 2013.

⁵ See email from Warren Firschein, Office of Managing Director, FCC, to Erica Goode, Booz Allen Hamilton, dated Apr. 23, 2013.

made further attempts to contact them.⁶ On May 17, Booz Allen apologized for the “difficulty” in contacting them, and asked for a copy of the sought-after documents for their review, which we provided.⁷ On May 23, 2013, citing the “high volume of similar requests for Booz Allen contracts across 70 government agencies,” Booz Allen requested that we grant it additional time to respond, until May 31, 2013.⁸ On May 24, 2013, we granted this request as well.⁹ However, Booz Allen did not reply by the new deadline. After at least one additional attempt to contact Booz Allen,¹⁰ on July 3, 2013, we advised Booz Allen that if we did not receive a response by July 10, 2013, we would process the FOIA request without their input.¹¹ We have not received a reply. Therefore, we have attached electronic copies of the documents you have requested, with minor redactions to the contract and modifications as discussed below.

Section 552(b)(4) of the FOIA, 5 U.S.C. § 552(b)(4) (Exemption 4) provides in relevant part that the disclosure requirements under the FOIA do not apply to “commercial or financial information obtained from a person and privileged or confidential.”¹² In pertinent part, information is considered “confidential” for purposes of Exemption 4 if disclosure of the material is likely “to cause substantial harm to the competitive position of the person from whom the information is obtained.”¹³ This criterion has been interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.¹⁴ Although Booz Allen has failed to object to the release of any information contained in these documents, the Commission may on its own motion determine that materials should be withheld from public inspection.¹⁵

In this case, disclosure of some of the information contained in the responsive documents is likely to cause substantial harm to Booz Allen’s competitive position. Specifically, disclosure of Booz Allen’s labor rates for specific tasks under this contract (including unit amounts and

⁶ See email from Warren Firschein, Office of Managing Director, FCC, to Erica Goode, Booz Allen Hamilton, dated May 3, 2013; email from Warren Firschein, Office of Managing Director, FCC, to Erica Goode, Booz Allen Hamilton, dated May 16, 2013.

⁷ See email from Erica Goode, Booz Allen Hamilton, to Warren Firschein, Office of Managing Director, FCC, dated May 17, 2013.

⁸ See email from Erica Goode, Booz Allen Hamilton, to Warren Firschein and Nereyda Dunn, Office of Managing Director, FCC, dated May 23, 2013.

⁹ See email from Warren Firschein, Office of Managing Director, FCC, to Michael Morisy, MuckRock News, and Erica Goode, Booz Allen Hamilton, dated May 24, 2013.

¹⁰ See email from Warren Firschein, Office of Managing Director, FCC, to Erica Goode, Booz Allen Hamilton, dated June 11, 2013.

¹¹ See email from Warren Firschein, Office of Managing Director, FCC, to Erica Goode, Booz Allen Hamilton, dated July 3, 2013.

¹² See also *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974) (*National Parks*); 47 C.F.R. § 0.457(d) (which implements Exemption 4 of the FOIA, and provides in relevant part that records not routinely available for public inspection include “[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential”).

¹³ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C.Cir.1992) (quoting *National Parks and Conservation Ass’n v. Morton*, 498 F.2d at 770)).

¹⁴ See *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C.Cir. 1987).

¹⁵ See 47 C.F.R. § 0.459(f) (“in the unusual instance, [the Commission] may determine on its own motion that the material should be withheld from public inspection”); see also *The Western Union Telegraph Co.*, 2 FCC Rcd 4485, 4486 (1987) (“In light of the important financial data contained in these submissions, we find that this constitutes such an unusual instance”).

estimated hours) could be used by a potential competitor to anticipate their costs and fees in future procurement actions and allow the competitor to underbid Booz Allen, thus allowing that competitor to take business away from Booz Allen in the future. In addition, release of the names and other identifying information of Booz Allen employees might allow a competitor to identify and hire away key personnel, and is recognized as having commercial value to competitors.¹⁶ Names of employees are also protected under FOIA Exemption 6, which permits the government to withhold all information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.”¹⁷

In addition, one of these documents contains information related to the agency’s computer security processes that is entitled to protection under Exemption 7(E). Exemption 7(E) protects from disclosure law enforcement records “to the extent that the production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”¹⁸ This exemption has been held to apply to information that would expose government computer systems to vulnerabilities and allow fraudulent access,¹⁹ as is the case here.

These determinations do not end our analysis. The FOIA requires that records be reviewed to determine if any segregable portions can be released.²⁰ We have released portions of documents where possible and have reviewed the remaining withheld records and determined that no additional portions may be segregated and released on this basis, as any remaining releasable portions are inextricably intertwined with the privileged portions of the documents.²¹

We also reviewed the withheld records to determine if discretionary release of any of the portions being withheld is appropriate.²² While it is true that “[e]ven when particular information falls within the scope of a FOIA exemption, federal agencies generally are afforded the discretion to release the information on public interest grounds,”²³ we decline to exercise our discretion to do so here. We do not discern any overriding public interest in releasing the material that we have determined is exempt from disclosure under FOIA Exemptions 4 and 6 given the given the substantial commercial confidentiality and personal privacy interests

¹⁶ See *Audio Technical Services v. Army*, 487 F.Supp. 779 (D.D.C. 1979).

¹⁷ 5 U.S.C. § 552(b)(6).

¹⁸ 5 U.S.C. § 552(b)(7)(E).

¹⁹ See *Strunk v. U.S. Dep’t of State*, 905 F.Supp.2d 142, 148-49 (D.D.C. 2012); *Miller v. U.S. Dep’t of Justice*, 872 F.Supp.2d 12, 29 (D.D.C. 2013).

²⁰ See 5 U.S.C. § 552(b) (sentence immediately following exemptions).

²¹ See, e.g., *Neufeld v. IRS*, 646 F.2d 661, 663 (D.C. Cir. 1981).

²² See *Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act*, 74 FR 4683 (2009) (President Obama’s memorandum concerning the FOIA); *The Freedom of Information Act (FOIA)*, available at <<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>> (Attorney General Holder’s FOIA Memo).

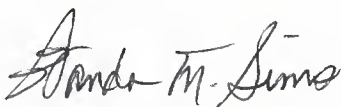
²³ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24818 (1998), citing *Chrysler Corp.*, 441 U.S. 281, 292-94 (1979).

attendant to that information.²⁴ We also find no overriding public interest in releasing the material that we have found exempt under FOIA Exemption 7(E) given the likelihood of substantial harm that disclosure would cause to the Commission's law enforcement techniques and procedures. All the exempt information identified here has been redacted from the attached documents and marked by the phrase "Exemption 4," "Exemption 4 and 6," or "Exemption 7(E)" in the margins, as appropriate.

We are required by the FOIA, 5 U.S.C. § 552(b)(4), and section 0.470 of the Commission's rules, 47 C.F.R. § 0.470, to charge FOIA requesters certain fees, depending on the classification of requesters into one of three categories defined in Section 0.466 of the Commission's rules, 47 C.F.R. § 0.466. The categories are: (1) commercial use requesters; (2) educational and noncommercial scientific institution requesters and requesters who are representatives of the news media; and (3) all other requesters. You have been classified for fee purposes as category (2), that is, "representative of the news media," and as such you must pay for duplication cost only, and will not be charged for duplication of the first 100 pages. The fees for duplication cost are 10 cents per page.²⁵ There was minimal search and review time and the documents are being provided to you electronically. Therefore, you will not be charged for the fees associated with processing and responding to your FOIA request.²⁶

Pursuant to section 0.461(j) of the Commission's rules, 47 C.F.R. § 0.461(j), you may seek review of our decision issued in response to your FOIA request. Any such application for review should be filed with the Commission's Office of the General Counsel within 30 days of the date of this letter.

Sincerely,



Wanda Sims
Associate Managing Director

cc: FOIA Officer, FCC
Erica Goode, Booz Allen Hamilton Inc.
Warren Firschein, FCC

²⁴ See U.S. Department of Justice, Office of Information Policy, *FOIA Post, President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines Creating a "New Era of Open Government,"* (2009), available at <<http://www.usdoj.gov/oip/foiapost/2009foiapost8.htm>> > (recognizing that discretionary release of records is less likely when the requirements of Exemptions 4 and 6 are met for withholding records).

²⁵ 47 C.F.R. § 0.465(c)(2).

²⁶ 47 C.F.R. § 0.470(f).